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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Main Case No. 14-22048-rdd

5 Adv. Case No. 14-08218-rdd

6 - - - - -x

7 In the Matter of:

8 BUHRE BEVERAGE DISTRIBUTION, INC.,

9 Debtor.

10 - - - - -x

11 SANCHEZ,

12 Plaintiff,

13 -against-

14 BUHRE BEVERAGE DISTRIBUTION, INC.,

15 Defendant.

16 - - - - -x

17 United States Bankruptcy Court

18 300 Quarropas Street

19 White Plains, New York

20 August 8, 2014

21 10:33 AM

22

23 B E F O R E:

24 HON. ROBERT D. DRAIN

25 U.S. BANKRUPTCY JUDGE

1  
2 14-22048-rdd: Motion to Approve (1) Sale Procedures; (2)  
3 Bidding Procedures; (3) Break-Up Fee, if Applicable; (4) the  
4 Form and Manner of Notice; (5) the Schedule for an Auction and  
5 Sale Hearing; (6) Authorizing the Sale of Substantially All of  
6 the Debtor's Assets Free and Clear of All Liens, Claims,  
7 Interests and Encumbrances, Granting the Successful Bidder Good  
8 Faith Status, Waiving the Ten-Day Stay of the Sale Order; and  
9 (7) Granting Such Other Relief as Proper

10  
11 Supplemental Statement to Motion to Approve (1) Sale  
12 Procedures; (2) Bidding Procedures; (3) Break-Up Fee, if  
13 Applicable; (4) the Form and Manner of Notice; (5) the Schedule  
14 of an Auction and Sale Hearing; (6) Authorizing the Sale of  
15 Substantially All of the Debtor's Assets Free and Clear of All  
16 Liens, Claims, Interests and Encumbrances, Granting the  
17 Successful Bidder Good Faith Status, Waiving the Ten-Day Stay  
18 of the Sale Order; and (7) Granting Such Other Relief as Proper  
19

20 14-08214-rdd: Pre-Trial Conference

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UNITED STATES DEPARTMENT OF JUSTICE

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BY: GREG M. ZIPES, ESQ.

## 1 P R O C E E D I N G S

2 THE COURT: All right. In Re: Buhre Beverage  
3 Distributors, Inc. -- Distribution, Inc., excuse me.

4 I think you better get Ms. Penachio.

5 UNIDENTIFIED SPEAKER: We're going to need Ms.  
6 Penachio again.

7 THE COURT: Okay. Good morning.

8 UNIDENTIFIED SPEAKER: Good morning, Your Honor.

9 THE COURT: All right. There are a couple matters on  
10 the calendar today. I think we should take the motion to  
11 approve sale procedures, et cetera, first, and then deal with  
12 the pre-trial.

13 MS. PENACHIO: Thank you, Your Honor. Ann Penachio on  
14 behalf of the debtor, Buhre Beverage Distribution.

15 MR. WALDMAN: Thomas Waldman, Your Honor, from  
16 Greenbaum, Rose, Smith & Davis, Roseland, New Jersey, on behalf  
17 of Pepsi Cola Bottling Company of New York, Inc.

18 MR. MCAULIFFE: Good morning, Your Honor. Michael  
19 McAuliffe on behalf of creditor William Sanchez.

20 MR. ZIPES: And Greg Zipes, Your Honor.

21 THE COURT: Okay.

22 All right. So I've reviewed the pleadings on this.  
23 Has there been any further developments on that?

24 MS. PENACHIO: I don't believe so, Your Honor.

25 THE COURT: Okay. All right.

1 Well, I -- the motion is unopposed with the exception  
2 of a limited objection by Mr. Sanchez, who seeks an express  
3 provision in the bidding procedures that he would be permitted  
4 to credit bid his secured debt. And of course, that secured  
5 debt is the subject of an adversary proceeding, where,  
6 admittedly, it's an unusual posture; rather than a proceeding  
7 to avoid a lien, the proceeding is seeking a declaratory  
8 judgment or a reformation of documents that, on their face,  
9 don't show a valid lien.

10 So in my view, based upon that, I think that if Mr.  
11 Sanchez were to credit bid, he would need to support that bid  
12 with an escrow, a bond or letter of credit for the amount of  
13 the bid in the event that I determine that he, in fact, doesn't  
14 have a lien on the debtor's assets, including the distribution  
15 amount. That's the mechanism that the courts have  
16 traditionally taken when there's a legitimate  
17 interest -- sorry, a legitimate issue as to whether someone who  
18 wants to credit bid in fact has an enforceable interest, a lien  
19 in the assets that are going to be sold.

20 See, for example, In Re: RLL Development, Inc., 2014  
21 Bankr. LEXIS 3024 at pages 8 through 6; (Bankr.W.D. Tenn., July  
22 10, 2014), which required a LC to be posted if the lien issue  
23 had not been resolved by everyone before the bid, and In Re:  
24 Dibart Bancroft 1993, U.S. District LEXIS 836, (E.D. La.,  
25 1993). See also In Re: Free-Lance Star Publishing Company 2014

1 Bankr. LEXIS 1611 at pages 25 through 26, (Bankr.E.D. Va.,  
2 April 14, 2014), which goes through the -- and which I believe  
3 properly -- the proper analysis of the limitation in Section  
4 363 itself, which limits the right to credit bid for cause and  
5 notes that the most common reason for finding cause in that  
6 scenario is where there's a legitimate dispute as to the  
7 parties' interest in the assets to be sold.

8           So I'm happy to put in the procedures that Mr. Sanchez  
9 can credit bid provided that his agreement to purchase be  
10 supported by a letter of credit, an escrow or a bond in the  
11 amount of the purchase price. That is in addition to an  
12 agreement to pay the breakup fee, because I'm otherwise  
13 approving the procedures which include a 15,000-dollar breakup  
14 fee in cash. I think there's no other charges, right, or are  
15 there are other charges?

16           MS. PENACHIO: Your Honor, there may be. Pepsi has  
17 indicated that, as part of its agreement to transfer the route  
18 to the prospective --

19           THE COURT: Right.

20           MS. PENACHIO: -- purchaser --

21           THE COURT: It would be treated, in essence, as a  
22 cure.

23           MS. PENACHIO: Yeah. So --

24           THE COURT: Well, that's part of the bidding  
25 procedures, and that would have to be done in cash. That's a

1 step -- I mean, all the other aspects of it, such as assuming  
2 the leases on the vending machines, those would have to be done  
3 with real money, obviously.

4 MS. PENACHIO: Very well, Your Honor.

5 THE COURT: Yeah.

6 MR. WALDMAN: The other issue, Your Honor, that's  
7 raised in the response that we filed to Mr. Sanchez's  
8 opposition is this. One of the conditions of bidding,  
9 obviously, is that Pepsi --

10 THE COURT: I understand.

11 MR. WALDMAN: -- that my client approve --

12 THE COURT: But that'll be dealt with when we deal  
13 with the sale.

14 MR. WALDMAN: Okay. Thank you, Your Honor.

15 THE COURT: Okay?

16 So other than that, there's no objection to the sale  
17 procedures, and I find them to be appropriate. So you can make  
18 the revision that I just went through on Mr. Sanchez's  
19 objection and then submit the order and the procedures with the  
20 procedures attached. I think it's a good idea to attach them,  
21 because -- you now have the supplement?

22 MS. PENACHIO: Yes, Your Honor.

23 THE COURT: So you should mark those up. You're  
24 probably going to need to circulate them with a blackline to  
25 the purchaser's counsel, Pepsi's counsel and Mr. McAuliffe.



1 MR. WALDMAN: Thank you, Your Honor.

2 MS. PENACHIO: Very well, Your Honor.

3 THE COURT: Okay. Thanks.

4 All right. And then, we have the pre-trial  
5 conference, too. As I remember, we had the Local Rule 756  
6 conference, and I gave Mr. Sanchez the option to file a motion  
7 for summary judgment. I guess the time for that  
8 quite -- hasn't quite expired yet.

9 MR. MCAULIFFE: Correct, Your Honor. We're presently  
10 on for September 23rd for the date for the hearing --

11 THE COURT: That's the hearing date?

12 MR. MCAULIFFE: Which I understand is the date --

13 THE COURT: Okay.

14 MR. MCAULIFFE: -- of the sale approval hearing.

15 THE COURT: All right. Well, we'll -- that will  
16 either be a hearing on the summary judgment motion or a pre-  
17 trial conference, then. And discovery's complete? Is that  
18 right?

19 MR. MCAULIFFE: No, Your Honor.

20 MS. PENACHIO: No --

21 THE COURT: No?

22 MS. PENACHIO: -- Your Honor. It hasn't even begun.

23 THE COURT: Oh, okay. All right. That's why I'm  
24 somewhat reluctant to grant --

25 MS. PENACHIO: Right.

1 THE COURT: -- the permission to file a summary  
2 judgment motion.

3 So you should discuss, pending that hearing, what you  
4 think would be an appropriate discovery schedule.

5 MS. PENACHIO: Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. MCAULIFFE: We will, Your Honor. Thank you.

8 THE COURT: I mean, it looks like here, unless Mr.  
9 Sanchez is able to bid, that there will be real cash to deal  
10 with. So this is meaningful, and so you all should discuss  
11 that discovery schedule just as a fallback if I don't grant the  
12 summary judgment motion.

13 MS. PENACHIO: Thank you, Your Honor.

14 THE COURT: Okay.

15 IN UNISON: Thank you, Your Honor.

16 THE COURT: And you don't have to bring -- if you  
17 decided not to bring it, you don't have to bring it. We can go  
18 right to a pre-trial order, too.

19 MR. MCAULIFFE: I understand, Judge. We're finalizing  
20 it as of right now.

21 THE COURT: Okay.

22 MR. MCAULIFFE: But thank you, Judge.

23 THE COURT: All right. Thanks. Okay.

24 (Whereupon these proceedings were concluded at 10:41 AM)

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## I N D E X

### RULINGS

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C E R T I F I C A T I O N

I, Aliza Chodoff, certify that the foregoing transcript is a true and accurate record of the proceedings.



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ALIZA CHODOFF

AAERT Certified Electronic Transcriber CET\*\*D-634

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Date: August 14, 2014